

NO. \_\_\_\_\_

IN THE MATTER OF

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IN THE DISTRICT COURT

OF HIDALGO COUNTY

YODER FORD, INC.  
d/b/a HACIENDA FORD

\_\_\_\_\_ JUDICIAL DISTRICT

**ASSURANCE OF VOLUNTARY COMPLIANCE**

COMES NOW, THE STATE OF TEXAS, acting by and through Attorney General GREG ABBOTT, and Respondent YODER FORD, INC., doing business as HACIENDA FORD, respectfully submit the following Assurance of Voluntary Compliance (“AVC”) for the Court’s approval and filing in accordance with the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.58.

**RESPONDENT**

1. Respondent YODER FORD, INC. (hereinafter “Respondent” or “Hacienda Ford”) is a Texas corporation, whose principal place of business is 3010 W. University Drive, Edinburg, Texas 78539. Respondent owns and operates a car dealership offering new and used motor vehicles for sale or lease.

**ALLEGATIONS**

2. The Office of the Texas Attorney General alleges that Respondent Hacienda Ford has in the course of trade and commerce advertised goods with the intent not to sell them as advertised, in violation of Section 17.46(a) and (b)(9) of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (Vernon 1987 and Supp. 2002)

(hereinafter “DTPA”). More specifically, it is alleged that Respondent engaged in a newspaper bait-advertising scheme in 2001, in which it advertised the sale of vehicles at a certain sales price, but sold these vehicles for more than the advertised sales price appearing in the advertisement by charging for an accessory (i.e., security system) that was installed on the vehicles prior to sale.

#### STIPULATIONS

3. Respondent Hacienda Ford does not admit to any violations of law, or liability for any alleged acts, by entering into this AVC, but stipulates to the applicability of the Texas Deceptive Trade Practices - Consumer Protection Act for jurisdictional purposes of entering into this AVC and submits itself to the jurisdiction of the Court.

4. The parties stipulate that this AVC represents a full and final compromise and settlement of all matters arising out of the facts alleged by the STATE OF TEXAS in this matter.

#### ASSURANCES

5. In response to the Attorney General’s allegations, but without admitting the truth of these allegations, Respondent Hacienda Ford voluntarily assures the Office of the Texas Attorney General and thereby the consumers of Texas that from the date of the signing of this AVC, which shall be filed with the appropriate Court, Respondent, its officers, directors, agents, employees, representatives, and all persons acting in concert with Respondent shall refrain from the following:

- a. Advertising the sale of a vehicle at a sales price that excludes the price of an accessory that was installed on the vehicle prior to sale and that Respondent charges for at the time of sale;
- b. Selling a vehicle for more than the advertised sales price appearing in an

advertisement, in order to include the price of an accessory that was installed on the vehicle prior to sale;

c. Adding a charge for an accessory to the advertised sales price of a vehicle unless the charge is the result of bona fide up-selling activity;

d. Charging for an accessory in connection with the sale of a vehicle that is offered for sale at an advertised sales price unless the charge is the result of bona fide up-selling activity;

e. Representing, expressly or by implication, to a prospective buyer that the purchase of an accessory is mandatory when buying a vehicle; and

f. Using a salesman's worksheet, purchase order or other form that has the name of an accessory (including, but not limited to, "Security," "Security System," "Touch of Class" or "Pinstripes") and/or the associated charge pre-printed on a line item for accessories.

6. For purposes of this Assurance of Voluntary Compliance, the following definitions shall apply:

a. "Accessory" means an after-market item, add-on and/or supplemental products and services including, but not limited to, an alarm, security system, pinstripes, rust proofing, undercoating, paint sealant, fabric and vinyl protectant, service contract, or credit insurance;

b. "Advertising" or "advertisement" means making an oral, written, graphic, or pictorial statement in the course of soliciting business, including, without limitations, making a statement or representation in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line computer service, or on television;

c. “Vehicle” means new or used motor vehicles; and

d. “Up-selling activity” means the sale of an accessory by which Respondent discloses to the buyer that the purchase of the accessory is optional and that the charge for the accessory is in addition to the advertised price for the vehicle, and the buyer expressly consents to the purchase of the accessory.

7. Respondent Hacienda Ford further assures the Office of the Texas Attorney General that Respondent shall sell vehicles at the sales price advertised in an advertisement, such advertised sales price being the full cash price for which the vehicle will be sold to any and all members of the buying public, *provided that* defendant may change the sales price of an advertised vehicle by a subsequent advertisement, and *provided further that* charges for taxes, registration, title and license fees may be excluded from the sales price advertised in an advertisement.

8. Respondent Hacienda Ford further assures the Office of the Texas Attorney General that Respondent shall institute reasonable practices to provide notice of the applicable terms of this AVC to all agents and employees involved in the sale of new or used vehicles.

9. Respondent Hacienda Ford understands and agrees that the State’s execution of this AVC does not constitute an approval by the State of Texas of any good or service sold or offered for sale by Respondent or of any business practice of Respondent. Therefore, Respondent voluntarily assures the Office of the Attorney General that Respondent, its officers, directors, agents, employees, representatives, and all persons acting in concert with Respondent shall not represent, directly or by implication, that the Court or the Attorney General has approved any good or service sold or offered for sale by Respondent, or has approved any of business practice of Respondent.

## FEES, PENALTIES AND RESTITUTION

10. The acceptance of this AVC is conditioned upon payment by Respondent to the STATE OF TEXAS of the sum of \$130,000.00 comprised of the following amounts:

- a. The amount of \$30,000.00 as reasonable attorney's fees and for investigative costs incurred by the STATE OF TEXAS in the in pursuit and resolution of this matter; and
- b. The amount of \$100,000.00 as restitution to consumers, in order to restore money acquired by means of Respondent's business practices, as alleged above.

Said \$130,000.00 shall be due at the time of signing of this AVC and made payable to the STATE OF TEXAS by certified check. The certified check shall bear the identifying number "AG No. 011491305" and shall be delivered to the Office of the Attorney General, Consumer Protection Division, 3201 North McColl Road, Suite B, McAllen, Texas 78501.

11. It is understood and agreed that with respect to amounts of civil restitution that the STATE OF TEXAS may collect from Respondent, the review, determination and allocation of amounts of money to be restored to identifiable persons shall be, upon final order by the Court approving this AVC, within the sole discretion of the Consumer Protection Division of the Attorney General of Texas.

12. It is further understood and agreed that all costs of court herein are assessed against Respondent.

## ACKNOWLEDGMENTS

13. As set forth in TEX. BUS. & COM. CODE ANN. § 17.58(c), both the STATE OF TEXAS and Respondent acknowledge that unless this AVC has been rescinded by agreement of the parties or

voided by the Court for good cause, subsequent failure to comply with the terms of this AVC is *prima facie* evidence of a violation of Texas Deceptive Trade Practices - Consumer Protection Act § 17.41 *et seq.* and is actionable thereunder.

14. It is agreed and understood that this AVC does not affect individual rights of action.

15. The parties have read and understand the terms of this AVC, approve it as to form and substance and consent to its entry.

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection  
and Public Health Division

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RIC MADRIGAL  
Assistant Attorney General  
State Bar No. 12802200  
Office of the Attorney General  
Consumer Protection and  
Public Health Division  
3201 N. McColl, Suite B  
McAllen, TX 78501  
(956) 682-4547; fax (956) 682-1957  
Attorney for Plaintiff

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William R. Yoder  
President, who has the authority to sign herein  
on behalf of Respondent:  
YODER FORD, INC.  
3010 W. University  
Edinburg, Texas 78539

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Roberto J. Yzaguirre  
6521 N. 10<sup>th</sup>, Suite A  
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(956) 682-4308  
(956) 632-7864 fax  
State Bar No. 07476000  
Attorney for Respondent

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d/b/a HACIENDA FORD

\_\_\_\_\_ JUDICIAL DISTRICT

**FINAL ORDER**

On this date came for consideration the above entitled and numbered cause in which the STATE OF TEXAS and YODER FORD, INC., doing business as HACIENDA FORD, have presented the attached Assurance of Voluntary Compliance to the Court for approval.

It has been stipulated by the parties that this Assurance of Voluntary Compliance represents a compromise and settlement of all matters arising out of facts alleged by the STATE OF TEXAS in this matter. Based on the stipulation of the parties, and it appearing to the Court that the parties agree to the approval of the Assurance of Voluntary Compliance,

IT IS THEREFORE ORDERED that the attached Assurance of Voluntary Compliance is approved.

The clerk of the Court is hereby ordered to accept the Assurance of Voluntary Compliance for filing with the papers of this cause. This order is final, and disposes of all claims raised by the STATE OF TEXAS in this matter. All relief not granted herein is denied.

Signed \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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PRESIDING JUDGE